

To: "Nawi, David" [David_Nawi@ios.doi.gov]
Cc: "Nawi, David" [David_Nawi@ios.doi.gov]; melanie.rowland@noaa.gov
[melanie.rowland@noaa.gov]; Barajas, Federico" [FBarajas@usbr.gov]; Milligan, Ronald E"
[RMilligan@usbr.gov]; Castleberry, Dan" [dan_castleberry@fws.gov]; N=Karen
Schwinn/OU=R9/O=USEPA/C=US@EPA;"Grim, Mary" [Mary_Grim@fws.gov]; Grim, Mary"
[Mary_Grim@fws.gov]; Nepstad, Michael G SPK" [Michael.G.Nepstad@usace.army.mil];
michael.s.jewell@usace.army.mil" [michael.s.jewell@usace.army.mil]; Idlof, Patricia S"
[Pidlof@usbr.gov]; Norris, Jennifer" [jennifer_norris@fws.gov]; Michael Tucker"
[Michael.Tucker@NOAA.GOV]; N=Tom Hagler/OU=R9/O=USEPA/C=US@EPA;"Kiger, Luana -
Davis, CA" [Luana.Kiger@ca.usda.gov]; Kiger, Luana - Davis, CA" [Luana.Kiger@ca.usda.gov];
Fujii, Roger" [rfujii@usgs.gov]; Arroyave, Pablo R" [PArroyave@usbr.gov]; oward Brown
[Howard.Brown@noaa.gov]; oward Brown [Howard.Brown@NOAA.GOV]; Lohofener, Ren"
[Ren_Lohofener@fws.gov]; Belin, Letty" [Letty_Belin@ios.doi.gov]; Glaser, Donald R"
[DGlaser@usbr.gov]; Deanna Harwood" [Deanna.Harwood@noaa.gov]; Schlueter, Rosalyn A
(Rose)" [RSchlueter@usbr.gov]; rod.mcinnis@noaa.gov" [rod.mcinnis@noaa.gov]; Shouse,
Michelle K" [mkshouse@usgs.gov]; Keay, Jeffrey A" [jkeay@usgs.gov]; Allen, Kaylee"
[Kaylee.Allen@sol.doi.gov]; Monroe, James" [James.Monroe@sol.doi.gov];
'Chris.Yates@noaa.gov'" [Chris.Yates@noaa.gov]; Will.Stelle@noaa.gov" [Will.Stelle@noaa.gov];
jeff.McLain@noaa.gov" [jeff.McLain@noaa.gov]; Morales, Francia S" [FMorales@usbr.gov];
Pennell, Becky" [Becky_Pennell@fws.gov]
Bcc: []
From: CN=Erin Foresman/OU=R9/O=USEPA/C=US
Sent: Fri 4/8/2011 4:43:12 PM
Subject: Re: Federal Coordination Meeting April 7
[1994 NEPA404MOU.pdf](#)
[nepa404 2006 final mou.pdf](#)
[PlacerPkwyTier1NEPA-404.pdf](#)
[NEPA 404 408 MOU Signed.pdf](#)
[40cfrPart230.pdf](#)
<http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html>

Hi Everyone,

Attached are four NEPA/CWA Section 404 Inegration MOUs. The 2006 and 1994 Caltrans MOUs are project level (2006 replaced 1994 but both are still useful to learn from), the Placer Parkway MOU is planning level, and the High Speed Rail MOU is project level.

Note that the Placer Parkway freeway project is a local assistance project, meaning Caltrans is not the applicant which required us to establish an MOU with the local transportation agency. We would have used the existing Caltrans MOU if they had been the applicant for that project. Its primary purpose here is to show an example of a planning level or tiered NEPA-CWA Section 404 integration process. BDCP includes both planning level and project level actions so hopefully these examples will cover everything.

Lastly, I attached a copy of the CWA Section 404(b)(1) Guidelines (regulations) and placed one of the important parts of the regs below for quick reference.

§ 230.10 Restrictions on discharge.

(a) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

(1) For the purpose of this requirement, practicable alternatives include, but are not limited to: (i) Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters; (ii) Discharges of dredged or fill material at other locations in waters of the United States or ocean waters;

(2) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

(3) Where the activity associated with a discharge which is proposed for a special aquatic site (as defined in subpart E) does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not “water dependent”), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.

(4) For actions subject to NEPA, where the Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents, including supplemental Corps NEPA documents, will in most cases provide the information for the evaluation of alternatives under these Guidelines. On occasion, these NEPA documents may address a broader range of alternatives than required to be considered under this paragraph or may not have considered the alternatives in sufficient detail to respond to the requirements of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information.

(5) To the extent that practicable alternatives have been identified and evaluated under a Coastal Zone Management program, a section 208 program, or other planning process, such evaluation shall be considered by the permitting authority as part of the consideration of alternatives under the Guidelines. Where such evaluation is less complete than that contemplated under this subsection, it must be supplemented accordingly.

(b) No discharge of dredged or fill material shall be permitted if it:

(1) Causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard;

(2) Violates any applicable toxic effluent standard or prohibition under section 307 of the Act;

(3) Jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. If an exemption has been granted by the Endangered Species Committee, the terms of such exemption shall apply in lieu of this subparagraph;

(4) Violates any requirement imposed by the Secretary of Commerce to protect any marine sanctuary designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

(c) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Findings of significant degradation related to the proposed discharge shall be based upon appropriate factual determinations, evaluations, and tests required by subparts B and G, after consideration of subparts C through F, with special emphasis on the persistence and permanence of the effects outlined in those subparts. Under these Guidelines,

effects contributing to significant degradation considered individually or collectively, include:

- (1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites.
 - (2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical processes;
 - (3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or
 - (4) Significantly adverse effects of discharge of pollutants on recreational, aesthetic, and economic values.
- (d) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps.

Erin Foresman
Environmental Scientist & Policy Coordinator,
US EPA Region 9 C/O Army Corps of Engineers
1325 J Street, 14th floor Sacramento, CA 95814-2922
Phone: (916) 557 5253; Fax: (916) 557 6877

<http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html>